

APPENDIX "A"

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS, FIFTH CIRCUIT**

No. 4181

Edward Hines Yellow Pine Trustees, Appellants

versus

Anna F. C. Martin, Et Als., Appellees

Appeal from the District Court of the United States for
the Southern District of Mississippi

T. J. WILLS and DAVIS & WALLACE, for Appellants.
F. C. HATHORN, (Hathorn & Williams on the brief)
for Appellees.

Before WALKER and BRYAN, Circuit Judges, and CALL
District Judge. CALL, District Judge:

The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; F. C. Martin SE $\frac{1}{4}$ of SE $\frac{1}{4}$ H. P. Lewis, SW $\frac{1}{4}$ of NW $\frac{1}{4}$; and George Lawrence, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, all in Section 36, Twp. 2, South of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendant as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence,

and a decree rendered whereby it was adjudged that the title to the lands was vested in the defendant and the prayers of the bills denied.

The agreed statement of facts among other things stipulated that the lands in question were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th, 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement and Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; that complainants acquired their title January 1st, 1918; that whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th, 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that the complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Company vs. Hall, 105 Fed 84, and Becker vs. Columbia Bank, 73 So. 798, but these particular lands were not involved in those suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8, 1871, of the legislature of the State of Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman 65, Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, SUPRA.

Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement and Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in the case of Southern Pine vs. Hall SUPRA.

In the case of Hardy vs. Hartman, 65 Miss., 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement and Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the Company and therefore such patent was void and did not divest the title of the State.

The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

BOND

"Pearl River Improvement and Navigation Company.

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company

was incorporated called the Pearl River Improvement and Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

W. P. Billings (Seal)
(by S. A. Vose, his Attorney
S. A. Vose (Seal)
A. Warner (Seal)
O C. French (Seal)

'Approved May 12th, 1871.

J. L. Alcorn, Governor."

The question of the validity of the patent to the Pearl River Improvement and Navigation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding damages to the State and affirmed the Chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound. they say "We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from."

In the case of *Southern Pine Co. vs. Hall*, 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the statute and the patent issued to the Pearl River Improvement and Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of title to real property dependent upon the statutes of a state. The construction of such statutes by the highest Court of the State is binding upon the Courts of the United States in cases not falling within some narrow exception. This rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by this Court in deciding cases arising under the statute.

As said by the Supreme Court in the case of *Jackson ex dem St. John vs. Chew*, 12 Wheat. 161, "The inquiry is very much narrowed, by applying the rule which has uniformly governed this court, that where any principle of law, establishing a rule of real property, has been settled in the state courts, the same rule will be applied by this court, that would be applied by the state tribunals. This is a principle so obviously just, and so indispensably necessary, under our system of government, that it cannot be lost sight of."

The same rule was applied in the case of *James H. Suydam vs. Wm. H. Williamson*, 24 Howard 427, and recognized by many decisions of the Supreme Court following.

The decree of the District Court is

Affirmed.

AN ACT TO INCORPORATE THE PEARL RIVER
IMPROVEMENT AND NAVIGATION COMPANY, AND
FOR OTHER PURPOSES

Section 1. Be it enacted by the Legislature of the State of Mississippi, That S. N. Clapp, John McLaurin, Roderick Seal, C. A. Chaplin, Samuel Benjamin, S. A. Vose, B. R. Pierce, H. Sanders, Wm. Beck, I. B. Campbell, B. Clay, J. G. Hanton, H. P. Billings, M. O. Huff, A. V. Miller, Richard Love, C. J. Jones, E. Stafford, F. P. Hilliard, A. Steele, H. S. Gove, Thomas Carnes, James Moore, John Diamond, T. D. Harriss, Peter Hopkins, J. T. Smith, G. W. Walton, J. J. Diller, Edward Hill, H. L. Williams, E. M. Stephens, and their successors, associates, and assigns, be and the same are, created a body corporate and politic, by the name and style of the "Pearl River Improvement and Navigation Company", and by that name may sue and be sued, plead and be impleaded, and defend and be defended against in any court of law or equity in this State; may have and use a common seal, may change and break the same at pleasure, may have and hold real estate, which may be acquired by gift, grant or purchase and may purchase, lease, sell, mortgage, grant alien and convey the same, together with personal property, with the same privilege as a private individual.

Section 2. Be it further enacted, That the capital stock of said company shall be three hundred thousand dollars to be divided into shares of one hundred dollars each. Each share of stock shall entitle the holder to one vote at any meeting of said stockholders; and as soon as seventy-five thousand dollars of said stock shall have been subscribed, and twenty-five thousand dollars paid in, the stockholders shall hold a meeting for the election of five directors, whose term of office shall continue until the first Monday of January, 1872, and until their successors are duly elected and qualified. A majority of said direc-

tors shall constitute a quorum for the transaction of any business appertaining to said company. They shall also proceed to elect out of their number such officers as may be fixed by its by-laws. Said board of directors are hereby vested with full power and authority to make such rules regulations and by-laws, to carry out the provisions of this act, not in violation of the laws of this State or of the United States, as they may deem best for the interest of the company. A majority of the corporators herein named may call a meeting for the purpose of opening books for subscription to the capital stock of said company, and notice of said meeting shall be published in the Weekly Mississippi Pilot

Section 3. Be it further enacted, That said company hereby incorporated shall be required to remove such obstructions as shall be necessary to render the stream navigable for ordinary steam craft; deepen and widen the channel of Pearl River and its tributaries; to slackwater by damming or dredging the same, and to make said stream suitable and fit for the purpose of navigation by steamboats and other watercraft from the mouth of said river to the city of Jackson, and so much higher up as may be deemed advisable, said company may establish harbors, build steamboats and other watercraft; navigate said river; build saw mills, grist mills, warehouses, tenement houses, storehouses, cotton gins, and such other buildings, factories and improvements as they, from time to time, deem advisable and advantageous to said company, and shall have power to operate and use the same for manufacturing purposes.

Section 4. Be it further enacted, That said company shall have full power and authority to carry out the provisions contemplated in the Act of March 12th, 1852, entitled "An Act to Provide for the Appropriation of the Swamp and Overflowed Lands on the Pearl River to the Commissioners of said River, Hereinafter to be Appointed for the Drainage of said Swamp Lands, and for other pur.

poses", and amendments thereto, and for that purpose, shall be, and are hereby declared to be legal and lawful successors of the Board of Commissioners appointed in pursuance of said Act of March 12, 1852, and amendments thereto, and as such successors, said company is hereby vested with the full power, and authority of said commissioners is hereby vested with the full power, and authority of said commissioners, and are hereby vested with all the rights, properties, claims and demands, real, personal and mixed, belonging to said board or under their control.

Section 5. Be it further enacted, That said company shall expend in the improvement of said river and in the navigation thereof, ten per centum the first year, of the value of the property referred to in the preceding section, and that the whole value of said property shall be expended for the purpose specified in this charter, within five years from the passage of this Act. That said company shall, within sixty days after the passage of this Act, file in the office of Secretary of State a bond in the sum of fifty thousand dollars, with two or more good securities, who shall make oath that they are worth the penalty of the bond over and above all liabilities and exemptions which securities shall reside in this State, to be approved by the Governor, and upon the approval and filing of said bond, said Secretary of State shall, from time to time as demanded by said company, make out a patent or patents which shall be signed by the Governor and countersigned by the Secretary of State, which patents shall vest the fee simple of said lands in this company; Provided, nothing in this section shall be construed as to require patents to be sued for any land heretofore sold to legal purchasers; Provided further, That no lands shall be disposed of or sold by said company for less sum than twenty-five cents per acre.

Section 6. Be it further enacted, That said company shall have the power and authority to issue bonds or promissory notes not exceeding two hundred and fifty

thousand dollars, payable within or without the State, and to secure the payment of which they may pledge or mortgage all or any or every part of the property of any kind belonging to said company; and the said board of directors may have full power and authority to sell or dispose of said lands, or any other property belonging to said company, at such rates of premium and discount and upon such terms as in the opinion of the board shall best promote the interest of said company

Section 7. Be it further enacted, That the stockholders of said company shall only be liable on the debts and contracts of said company to the amount of stock or shares respectively owned by them, that is to say, no stockholder shall be in any manner liable for more than the amount of stock owned by him.

Section 8. Be it further enacted, That the Governor may, at any time, require the president of said company to make a report to him of the amount of money expended in the improvement of Pearl River, which report shall be made under oath, and shall set forth all particulars relating to said improvement; and when it becomes apparent to the Governor, that said company has not complied with the conditions of said Act, and that they are not appropriating money derived from the sale of the land as hereinbefore provided, it shall become his duty to commence suit on the bond of said company in his own name, for the use of said Pearl River District.

Section 9. Be it further enacted, That the Governor may require a new bond, or additional security, to be given whenever the old bond or security becomes insufficient.

Section 10. Be it further enacted, That all Acts or parts of Acts in conflict with the provisions of this Act be, and the same are hereby repealed.

Section 11. Be it further enacted, that this Act take effect and be in force from and after its passage.

Passed the house of representatives March 22, 1871.

H. W. WARREN,
Speaker of the House of Representatives.

Passed the Senate March 27th, 1871.

R. C. POWERS,
President of the Senate.

STATE OF MISSISSIPPI

OFFICE OF SECRETARY OF STATE

Jackson, Mississippi.

I, James Lynch, Secretary of the State of Mississippi, do hereby certify that the above and foregoing Act entitled "An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes", was duly passed by both houses of the Legislature, at the dates above specified, by the respective presiding officers thereof, and remained in the hands of the Governor, and was not returned by him within five days (Sundays excepted) after it was presented to him, and that in the meantime no adjournment of said legislature occurred to prevent its return, whereby said Act became a law of said State by operation of the Constitution thereof.

Given under my hand and the Great Seal of the State
(L.S.) of Mississippi, hereunto affixed this 8th
day of April, A.D., 1871.

JAMES LYNCH,
Secretary of State.

APPENDIX "C"

CHAPTER CXIV. OF THE LAWS OF MISSISSIPPI AN ACT TO AUTHORIZE THE STATE TREASURER TO RECEIVE AND RECEIPT FOR CERTAIN MONEYS, AND FOR OTHER PURPOSES

WHEREAS, The Legislature of the State of Mississippi passed an Act incorporating the Pearl River Improvement and Navigation Company, under the provisions of which Act certain lands inured to said company, and have been patented to said company, in compliance with the Act of incorporation; and,

WHEREAS(The object and purpose of said Act was the improvement of Pearl River, which improvements are impracticable for the reason that said Act is too vague and indefinite to permit said improvements as contemplated by the spirit of the same; and,

WHEREAS, Heretofore said lands have not been subject to taxation, and by the sale to said company the same have become taxable, and the taxes thereon paid, thus contributing to the public revenue; therefore,

SECTION 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the Pearl River Improvement and Navigation Company, through its officers, agents and attorneys, be authorized and required to pay into the State Treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which has been patented to said company, and upon payment of said twenty-five cents per acre for the lands so patented to said company, the State Treasurer shall issue to persons so paying the same a receipt and if said receipt and payment be for an amount equal to the aggregate value of said land for which said company holds the legal and equitable title, at the rate of twenty-five cents per acre for the lands so held, and up on presentation of said receipt to the Secretary of State, he shall cancel and deliver up the bond on file in his office to secure a compliance of the provisions of the Act of incorporation.

SECTION 2. BE IT FURTHER ENACTED, That in all cases where any person or persons have purchased from the Board of Swamp Land Commissioners of Pearl River District or its lawfully authorized agent, any lands for which patents have been issued to said company, and have paid for the said in good faith, and received certificates of purchase or receipts therefor, but have failed to present said certificate to the Secretary of State for the purpose of obtaining patents for said lands, the said Pearl River Improvement and Navigation Company is hereby required, on satisfactory proof of said purchase being made, to execute to such person his, her, or their heirs or assigns, as the case may be, holding such certificates or receipts, a quit claim deed to said lands, relinquishing all right, title, interest, and claim to said lands; Provided, That said persons holding such certificates shall make the execution to said company, or its authorized agent, for the execution of said deed within the space of six months from the date of the passage of this Act, and in case such persons holding certificates as aforesaid to said lands so patented to said company, shall not make application for said deed of quit claim by said company within the Six months fixed by this Act, the title of the said company to all the lands patented to them shall become absolute and indefeasible in law and equity, and all persons claiming under certificates of purchase issued in good faith, who shall not make application for a quit claim deed as above provided, shall, after the lapse of the six months aforesaid, be forever barred, estopped from setting up title to any of the lands so patented to said company; **Provided**, That as to all lands about which there is no controversy of title, the said Pearl River Improvement and Navigation Company shall be entitled to receive patents instantly upon the payment thereof of the said sum of twenty-five cents per acre; **And provided further**, That in the final settlement with the Treasurer, the said company shall receive a credit of twenty-five cents per acre for each and every acre of land which they may release under the provision of this Act.

SECTION 3. BE IT FURTHER ENACTED, That the application for deed of quit claims under this Act shall be supported by affidavit of the person making the same, setting forth the numbers of the lands purchased, and that the full price fixed by the law has been paid to the Treasurer of the Board of Swamp Land Commissioners therefor, which said affidavit with the certificate of purchase shall be filed in the office of the Clerk of the Chancery Court of the several counties aforesaid within the space of six months from the date of the passage of this Act. The Clerk of the Court aforesaid shall thereupon forward certified copies of said certificates of purchase with the affidavits aforesaid, whereupon the Pearl River Improvement and Navigation Company shall execute the deeds of quit claim provided for in this Act, which shall be forwarded by the Secretary of State to the clerks aforesaid for delivery to the parties interested.

SECTION 4. BE IT FURTHER ENACTED, That if said payments as referred to in the first section of this Act are not made on or before the said first day of October, 1873, then all rights, title, interest and claim of said company, in and to said land shall revert to the State, and shall by the provisions of this Act, rest absolute in the State.

SECTION 5. BE IT FURTHER ENACTED, That in order to secure the carrying out of the provisions of this Act, said company, through its officers, shall, upon the approval of this Act, deposit with the Secretary of State all the patents for said lands which have been made by the State; said patents to be delivered to the company only upon a strict compliance with this Act.

SECTION 6. BE IT FURTHER ENACTED, That all Acts and parts of Acts, and all acts, deeds, and proceedings, whatever of the Pearl River Improvement and Navigation Company, be, and the same are hereby legalized, ratified and confirmed; this Act to take effect and be in force from and after its passage.

APPROVED, April 19, 1873.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

In the matter of the petition of the Edward Hines Yellow Pine Trustees vs. Anna F. C. Martin et als., and now come the petitioners herein, the Edward Hine Yellow Pine Trustees, and move the court upon a certified copy of the transcript of the record herein, and upon the annexed petition duly sworn to, for writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit to bring before this Honorable Court the case of THE EDWARD HINES YELLOW PINE TRUSTEES VS. ANNA F. C. MARTIN ET ALS., recently decided by the United States Circuit Court of Appeals, for such proceedings therein as to this court may seem just, and for such other and further relief as the court may deem the petitioners entitled.

T. J. WILLS,

Attorney for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

In the matter of the petition of the Edward Hines Yellow Pine Trustees for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit to bring before the Supreme Court of the United States the case of the Edward Hines Yellow Pine Trustees Anna F. C. Martin et als:

Sirs: Please take notice that upon a certified copy of the transcript of the record herein, and upon the annexed petition and the brief accompanying it by or on behalf of the petitioners herein, and duly sworn to, I shall move the motion hereto annexed in the Supreme Court of the United States at the Capitol in the city of Washington,

District of Columbia, on Monday, the 5th day of May, 1924, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and I shall then and there move the court for further relief in the premises as may be just.

Witness my hand this the 7th day of April, 1924.

T. J. WILLS,
Attorney for Petitioners.

To Hathorn & Williams, Esqs.,
Poplarville, Mississippi
Attorneys for Anna F. C. Martin, et als.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners vs.

ANNA F. C. MARTIN ET ALS., Respondents

We acknowledge receipt of copies of the above and foregoing petition and brief, motion, and notice, all of which this day have been delivered to us this the 7th day of April, 1924.

HATHORN & WILLIAMS,
Attorneys for Respondent.